

No. 1-14-2646

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GREGG MOORE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 2014 COEL 000018
)	
ROBERT SHERMAN, GARY GALE and LOU)	
ATSAVES,)	The Honorable
)	Alfred J. Paul,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

HELD: Trial court properly granted Illinois State Board of Elections' motion to dismiss plaintiff's complaint seeking review of its decision declaring the invalidity of his candidacy for governor; since plaintiff failed to strictly comply with the requirements of section 10-10.1 of the Illinois Election Code, trial court lacked subject matter jurisdiction over his claims.

¶ 1 Following the declaration of the invalidity of his candidacy, plaintiff-appellant Gregg

Moore, *pro se* (plaintiff) moved for an expedited briefing schedule and decision related to the general election for governor and lieutenant governor of the State of Illinois to be held on November 4, 2014. This court granted his motion on October 6, 2014, and plaintiff filed his brief, asking that we place his name and that of "his chairman" Morgan Magistrale on the ballot. For their part, the Illinois State Board of Elections (Board) and defendants-appellees Robert Sherman, Gary Gale and Lou Atsaves (defendants or as named), have chosen not to file a brief in this cause.¹ We consider this appeal on appellant's brief only, pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).² Upon review, we issue the instant order affirming the decision of the trial court and dismissing plaintiff's appeal.

¶ 2

BACKGROUND

¶ 3 For the record, we present only those facts most relevant to our decision here, which we have taken directly from the record as filed in the instant cause.³

¹Notably, while plaintiff named defendants as parties to this appeal, he did not so name the Board and instead refers to it as only an "objector."

²Plaintiff presented this court with a motion to file a reply brief in this matter. However, having already taken this cause on plaintiff's brief only, and without defendants having filed a responsive brief to which plaintiff could reply, we denied his motion.

³We have noted that plaintiff appears *pro se*. While his brief on appeal attempts to somewhat follow an appropriate format with the inclusion of headings, explanations, etc., its substantive content is nowhere near as proper. Rather, it does not discuss any standard of review; it is littered with confusing, nonsequential and argumentative statements of "fact;" it does not cite to any portion of the record on appeal; and it makes conclusory and misinterpreted allusions as to the trial court's rulings, focusing more on accusing the Board of "illegal" filings and the court and its clerks of "Unintended Causes of Human Action" than appropriately using the law to further his own claims. Clearly, plaintiff's brief violates Illinois Supreme Court Rule 341(h) (eff. July 1, 2008), which is compulsory regardless of a party's status. See *Ryan v. Katz*, 234 Ill. App. 3d 536, 537 (1992); *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Accordingly,

¶ 4 Plaintiff filed nomination papers to become a gubernatorial candidate in said election.

Sherman, Gale and Atsaves filed objections to the validity of plaintiff's candidacy, and the cause proceeded to a hearing before the Board. On July 21, 2014, the Board issued its written decision sustaining defendants' objections and refusing to certify plaintiff and his running mate on the ballot. The Board cited plaintiff and his running mate's failure to submit the requisite number of signatures on their nominating petitions to qualify them for access to the ballot as independent candidates for governor and lieutenant governor, in violation of section 10-3 of the Illinois Election Code (Code) (10 ILCS 5/10-3 (West 2012)).

¶ 5 On August 11, 2014, plaintiff filed a complaint against defendants Sherman, Gale and Atsaves, alleging that he did, indeed, have enough signatures because, as he interpreted it, section 10-3 requires 25,000 signatures "or 1% of the total votes cast in the last election for that office – whichever is lower;" plaintiff claimed to have met this latter requirement. See, *e.g.*, 10 ILCS 5/10-3 (West 2012). Plaintiff named the Board in the caption of his complaint, but not in the capacity of a defendant; he simply listed the Board as "ATTN: State Board of Elections" and provided an address. Plaintiff also did not name any of the Board members as defendants nor did he serve them with his complaint. Additionally, plaintiff filed a separate motion "for barring" the Board from filing an appearance in the matter, which he claimed was "illegal," and from doing anything other than filing the record in relation to his complaint. On August 18, 2014, the trial

while we have every right to strike plaintiff's brief and dismiss his cause (see *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38), for the sake of completeness, we choose, in our discretion and despite these shortcomings, to review this appeal. See *In re Estate of Jackson*, 354 Ill. App. 3d 616, 620 (2004).

court ordered the Board to file a response to plaintiff's motion on or before August 20, 2014, and it set the matter for hearing on August 25, 2014.

¶ 6 On August 19, 2014, the Board filed its appearance in this matter and responded to plaintiff's motion, asserting that it had the right to file its appearance and could not be barred by plaintiff since plaintiff's complaint sought review of the Board's very decision declaring the invalidity of his candidacy. In addition, on August 20, 2014, the Board filed a separate motion to dismiss pursuant to section 2-619(a)(1) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2012)), citing lack of subject matter jurisdiction. The Board asserted that plaintiff had failed to timely file and serve his complaint seeking review of its decision pursuant to section 10-10.1 of the Code (10 ILCS 5/10-10.1 (West 2012)), which requires strict compliance.

¶ 7 On August 25, 2014, as scheduled, the trial court considered plaintiff's motion to bar the Board from filing its appearance to his complaint and denied it. Then, on August 29, 2014, the trial court issued an order granting the Board's motion to dismiss plaintiff's complaint, declaring that it lacked subject matter jurisdiction over the cause.

¶ 8 ANALYSIS

¶ 9 On appeal, plaintiff urges this court to reverse the trial court's finding that it lacked subject matter jurisdiction over his petition for judicial review of the Board's decision. He makes several different arguments as the basis for his contention, including that the Board voted to remove him from the ballot without even hearing his argument, that he met the 1% total signature requirement under section 10-3, and that he properly served everyone required to be

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served with his complaint. Plaintiff concludes that he "meets every condition to be heard by the court *** on the Board['s] unfair ruling on his matter." However, based on the record before us, we wholly disagree.

¶ 10 Essentially, plaintiff is appealing from the trial court's grant of the Board's section 2-619 motion to dismiss. An appeal from the grant of such a motion is reviewed *de novo*. See *Solomon v. Ramsey*, 2014 IL App (1st) 140339, ¶ 13; *Rivera v. City of Chicago Electoral Board*, 2011 IL App (1st) 110283, ¶ 19. More specifically, the issue of whether a court has subject matter jurisdiction over issues resulting from an alleged failure to comply with the Code comprises a question of law that is reviewed *de novo*. See *Rivera*, 2011 IL App (1st) 110283, ¶ 19; see also *Solomon*, 2014 IL App (1st) 140339, ¶ 13.

¶ 11 Moreover, we note that Illinois courts lack general jurisdiction over election cases and may only review them pursuant to statute, namely, sections 10-10 and 10-10.1 of the Code. See *Solomon*, 2014 IL App (1st) 140339, ¶ 14; *Rivera*, 2011 IL App (1st) 110283, ¶ 20. Accordingly, it has become well established that the requirements mandated by these sections are considered jurisdictional and must be strictly followed. See *Lawrence v. Williams*, 2013 IL App (1st) 130757, ¶ 18, citing *Rivera*, 2011 IL App (1st) 110283, ¶ 20. A party's failure to comply with any of these sections' requirements when appealing a Board decision invites dismissal via section 2-619 for lack of subject matter jurisdiction. See *Rivera*, 2011 IL App (1st) 110283, ¶ 20, citing *Hough v. Will County Board of Elections*, 338 Ill. App. 3d 1092, 1094 (2003); accord *Solomon*, 2014 IL App (1st) 140339, ¶ 15, citing *Nelson v. Qualkinbush*, 389 Ill. App. 3d 79, 86-87 (2009) (if party fails to strictly abide by requirements of Code, subject matter jurisdiction over election

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contest "is not conferred upon either the circuit court or the appellate court"). Therefore, a motion to dismiss must be granted " 'if strict compliance with section 10-10.1 is not demonstrated in the record.' " *Rivera*, 2011 IL App (1st) 110283, ¶ 20, quoting *Nelson*, 389 Ill. App. 3d at 87.

¶ 12 Section 10-10.1, which is at primary issue in the instant cause, allows a potential candidate who was removed or prohibited from having his name placed on a ballot, such as plaintiff here, to secure judicial review of that decision by the Board. It states, in pertinent part:

"The party seeking judicial review must file a petition with the clerk of the court and must serve a copy of the petition upon the [Board] and other parties to the proceedings by registered or certified mail within 5 days after service of the decision of the [Board] as provided in Section 10-10. The petition shall contain a brief statement of the reasons why the decision of the [B]oard should be reversed. The petitioner shall file proof of service with the clerk of the court." 10 ILCS 5/10-10.1 (West 2012).

Based directly on the contents of section 10-10.1, our courts have repeatedly made clear that a plaintiff must satisfy four explicit and distinct requirements in order to obtain judicial review of a Board decision. That is, he must: "(1) file his challenging petition with the clerk of the court within five days after the Board's service of its decision; (2) serve copies of the petition on the Board and the other parties to the proceedings by registered or certified mail within five days after the Board's service of its decision; (3) state in that petition why the Board's decision should be reversed; and (4) file proof of service with the clerk of the court." *Rivera*, 2011 IL App (1st)

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110283, ¶ 22; accord *Solomon*, 2014 IL App (1st) 140339, ¶ 15.

¶ 13 Pertinent to the instant cause are those requirements dealing with who must be served and when. Briefly, with respect to who must be served, our courts have stated that section 10-10.1 requires a plaintiff to serve a copy of his petition or complaint upon those who are necessary and indispensable parties to his cause. See *Rivera*, 2011 IL App (1st) 110283, ¶ 24. This includes the Board itself as the entity that issued the decision which the plaintiff seeks to challenge, those individual Board members who participated in the decision as they were the ones who actually reached the decision of the Board, and the objectors to his candidacy as they are also parties to the proceedings. See *Rivera*, 2011 IL App (1st) 110283, ¶ 24. With respect to when they must be served, our courts have solidified that section 10-10.1 prescribes that this must be done " 'within 5 days after service of the decision of the [Board] as provided in Section 10-10.' " See *Rivera*, 2011 IL App (1st) 110283, ¶ 26, quoting 10 ILCS 5/10-10.1 (West 2010). This means that, once the Board has served the plaintiff with its written hearing decision declaring his candidacy invalid via section 10-10, namely, by either giving it to him in the open proceedings that led to the decision or, if he is not present, by personally delivering it to him or depositing a copy of it in the mail, the burden falls on the plaintiff to serve the necessary parties with his complaint for judicial review within five days from that date. See *Rivera*, 2011 IL App (1st) 110283, ¶ 26.

¶ 14 Upon our review of the record in the instant cause, it becomes immediately clear that plaintiff failed to strictly comply with the Code's section 10-10.1 jurisdictional requirements in two ways. First, he did not serve the necessary parties. Plaintiff filed his complaint seeking

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review of the Board's decision to exclude his name on the gubernatorial ballot against defendants Sherman, Gale and Atsaves, those who objected to his candidacy in the first place. He did not name the Board as a party to this action. In fact, as the record reveals, plaintiff went so far as to file a separate motion "for barring" the Board from participating in his suit in any way other than to provide the record of its proceeding and decision to the court. Furthermore, as for service regarding his suit, according to the proofs of service included in the record, plaintiff served the objectors to his lawsuit—defendants Sherman, Gale and Atsaves—by certified mail. He also sent a "proof of service" to the "Chairman" of the Board via certified mail. However, just as he did not name the Board as a party to his suit, plaintiff did not name its members as parties to his suit and did not serve them with a copy of his complaint. This is a clear violation of the second requirement of section 10-10.1. Again, under that section of the Code, plaintiff was required to serve copies of his complaint on the Board and on the other necessary parties to the proceedings, which included not only the objectors (whom plaintiff named as defendants) but also the Board's individual members who reached the decision from which plaintiff sought review. See *Rivera*, 2011 IL App (1st) 110283, ¶¶ 22, 24. Since he did not, there is no jurisdiction over his claim. See *Solomon*, 2014 IL App (1st) 140339, ¶ 16 (petitioner failed to strictly comply with Code by failing to identify as respondents to his complaint each of the Board members who issued the decision removing him from the ballot, thereby failing to confer jurisdiction on both circuit and appellate courts to review Board's decision).

¶ 15 In an attempt to dispute the undisputed law on this issue, plaintiff cites in passing *Lenahan v. Township Officers Electoral Board of Schaumburg Township*, 2013 IL App (1st)

130619, and states that the court therein found the "[f]ailure to name the electoral board and the county clerk as parties in the notice of appeal was not a ground for dismissal because the notice was amply sufficient to inform the parties of the judgment complained of, the relief sought, or the nature of the appeal." The court in *Lenehan* did come to the conclusion, in part, that the failure to serve the individual members of the Board or the Cook County Clerk did not deprive a reviewing court of jurisdiction over an appeal. See *Lenehan*, 2013 IL App (1st) 130619, ¶ 28. However, the *Lenehan* court was talking specifically about service of a notice of appeal and not, as in the instant cause, service of a complaint. Whereas the failure to individually name and serve Board members with a notice of appeal is only a defect in form and not content (see *Lenehan*, 2013 IL App (1st) 130619, ¶ 28), the reciprocate of that—failing to individually name and serve Board members with a complaint seeking relief from the Board's decision barring a plaintiff's name from an electoral ballot—is a defect in content and not simply in form. See 10 ILCS 5/10-10.1 (West 2012); *Rivera*, 2011 IL App (1st) 110283, ¶ 22. Thus, *Lenehan*, which, again, dealt with notices of appeal and not with complaints, is entirely distinguishable from the instant cause and provides no support for plaintiff's contentions.

¶ 16 In addition to failing to include and serve the proper parties, the second way plaintiff failed to strictly comply with section 10-10.1 of the Code involves its five-day filing requirement. This is indisputably clear. As noted earlier, the Board issued its decision declaring plaintiff's candidacy invalid on July 21, 2014. Plaintiff admits in his brief that he was present at that

hearing and received the Board's decision.⁴ Thus, pursuant to the requirements of section 10-10.1, plaintiff had five days from that date to file his complaint challenging the Board's decision. See 10 ILCS 5/10-10.1 (West 2012); see also 10 ILCS 5/10-10 (West 2012) (5-day time period for service begins once the Board has served the plaintiff with its written hearing decision declaring his candidacy invalid via section 10-10, which occurs by either giving it to him in the open proceedings that led to the decision or, if he is not present, by personally delivering it to him or depositing a copy of it in the mail addressed to him or his attorney of record). Pursuant to the record, however, plaintiff did not file his complaint until August 11, 2014—21 days later. Quite simply, then, even had plaintiff met every other requirement of section 10-10.1 of the Code including properly naming and serving all necessary parties, jurisdiction would still not exist over his claims because he failed to abide by the five-day filing requirement.⁵ See 10 ILCS 5/10-10.1 (West 2012); see, *e.g.*, *Rivera*, 2011 IL App (1st) 110283, ¶ 30.

¶ 17 Ultimately, plaintiff failed to strictly comply with the service requirements of section 10-10.1 of the Code. This divested the trial court of subject matter jurisdiction to consider his petition for judicial review of the Board's decision to invalidate his candidacy and bar his name from appearing on the ballot. As the trial court did not have jurisdiction over the matter, we, too,

⁴In fact, the record indicates that right after the Board issued its decision, plaintiff immediately appeared (on that same date) before a judge with a "summon complaint" and a "motion," which were denied. It was after this that plaintiff filed his motion "for barring" the Board from appearing in any capacity in his lawsuit.

⁵We note that, in addition, because plaintiff failed to meet the requirement of filing his complaint within five days of the Board's decision, plaintiff consequently also failed to meet the requirement of serving his complaint on the Board and the other necessary parties within five days of the Board's decision.

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lack jurisdiction to review it. Thus, we hold that the trial court properly granted the Board's motion to dismiss plaintiff's cause, and we must dismiss the instant appeal.

¶ 18

CONCLUSION

¶ 19 Accordingly, for all the foregoing reasons, we affirm the order of the trial court and dismiss the instant appeal.

¶ 20 Order affirmed; appeal dismissed.